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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1049

Roger L. Baker, *et ux.*,

Petitioners,

— v. —

Judge Hollie Pihl,

---------- *Respondent.*

Robert Briggs in his representative capacity, and
Probate Judge Albert R. Musick,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Roger L. Baker, and
Edna I. Baker
Rt. 1, BOX 538
BEAVERTON, OREGON
MAIL: P.O. BOX 5018
ALOHA, OREGON
97005
Petitioners - in propria
ph:649-1897

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review judgement of the United States Court of Appeals for the Ninth Circuit, entered for appeal no.76-2415 on December 29,1976, and that appeal no. 76-2311 be joined for review, beforejudgment, in the interests of conformity and justice.

OPINIONS BELOW

The judgment and orders of the United States Court of Appeals and the United States District Court for the District of Oregon are set out in Appendix A and are unreported. The Memorandum dismissal of Petition for Writ of Mandamus from the United States Supreme Court as reported in 46 L Ed 2d 414 is included in Appendix A.

JURISDICTION

The summary judgment of the United States Court of Appeals for the Ninth Circuit was entered on November 9,1976 and the petition for rehearing in banc was dismissed on December 29,1976, in appeal no. 76-2415.

The companion appeal no. 76-2311 has not been heard by the Ninth Circuit, and is sought to be joined for certiorari under Rule 20 of the United States Supreme Court Rules. The jurisdiction of this Court is invoked pursuant to Title 28 USC § 1254(1).

QUESTIONS PRESENTED

1. Whether the statutory rights, state constitutional guarantees, and substantive case law provide entitlement to due process of law in judicial proceedings, wherein:

(a) the probate judge Hollie Pihl ordered Mrs. Baker to hire an attorney;

(b) the probate judge allegedly swore to a false affidavit to support his removal of Mrs. Baker;

(c) the probate judge allegedly removed Mrs. Baker to settle disputed estate claims, and to cure a defaulted contract on estate land?

2. Whether an executor removal statute, which allows vague interpretation of grounds for removal, is defective under procedural due process standards of the Fourteenth Amendment?

3. Whether an executor removal statute which shifted onto the executor the burden of showing why she should not be removed unfairly shifted the burden of proof?

4. Whether defendant Briggs and Musick had jurisdiction or authority to jail Mrs. Baker and harrass petitioners, where:

(a) Mrs. Baker had statutory and precedential rights which were unresolved;

(b) Mrs. Baker's removal was had with an allegedly false affidavit?

5. Whether an executor empowering statute, which allows no procedure for notice and hearing to protect statutory rights, is defective under procedural due process standards of the Fourteenth Amendment, whereas:

(a) ORS 114.305 provides substantive supremacy to the testator's express will;

(b) Mrs. Baker was the testamentary, and court appointed executor, as well as the sole legatee of the estate of Fritz Gindhart;

(c) the estate had contract rights which were being threatened?

6. Whether the administrator empowering statute which shifts the burden of proving default on a contract for estate land onto the testamentary executor unfairly shifts the burden of proof?

7. Whether petitioners have a right to amend these actions to include an equal protection conspiracy violation, under 42 U.S.C.A. § 1985(2)&(3), whereas:

(a) petitioners have alleged that they were deprived of rights to enforce certain laws of the State of Oregon;

(b) petitioners had notified other individuals under court and case titles, and by certified mail, that they may be liable in the instant case against judge Pihl?

FEDERAL AND STATE PROVISIONS INVOLVED

I CONSTITUTIONAL PROVISION - FOURTEENTH AMENDMENT

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STATEMENT OF THE CASE

The jurisdiction in the courts below is provided by federal statutes titles 28 USC § 1343(3) and 42 USC § 1983(3) for deprivation of rights protected by the United States Fourteenth Amendment

On and before March 15,1975 petitioner Edna Baker was the duly appointed testamentary executor and sole legatee of her father's estate, the estate of Fritz Gindhart and home, a 40 acre farm in Washington County in the State of Oregon. Mrs. Baker's husband, petitioner Roger Baker, was involved collaterally in said estate, and as a damaged witness to the probate court's harrassment.

At the aforementioned time, petitioners were engaged in a suit for conspiracy to commit fraud, against former estate attorney, Paul M. Reeder, and the holders of a conditional contract to certain estate property, Mr. and Mrs. John R. Skourtes.

The Oregon State Supreme Court had awarded Specific Performance on said contract, the mandate of which was filed in the Oregon State Circuit Court for Washington County on February 27,1975, and was ordered and decreed by defendant Pihl on March 18,1975. The buyer was in default on the contract and would not make the payments due, yet defendant Pihl was ordering petitioners to pay court costs and the buyers' attorney fees from the estate.

On March 21,1975 defendant Musick ordered that a hearing be held on April 3,1975 at 1:00 pm on the rejected claim of Paul M. Reeder, without the full notice required by ORS 115.155.

On March 24,1975 Paul M. Reeder requested that the probate court hold a summary determination hearing on his rejected claim against the Estate of Fritz Gindhart. His request came 4 days after Judge Musick's notice of hearing on Reeder's claim.

On April 1,1975 petitioners dismissed James Auxier as estate attorney for not rejecting the summary determination hearing as provided by state law.

At the hearing on April 3,1975 defendant Pihl ordered Mrs Baker to hire an attorney, and he refused to allow Mr Baker to testify as to state law or other estate matters, Defendant Pihl ordered his clerk to write a note that Mrs Baker had until 5 pm on April 14,1975 to notify said clerk that Mrs Baker had hired an attorney.

On April 14,1975 Mrs. Baker advised Judge Pihl's clerk that she had hired attorney, Frank Porcelli,and the clerk acknowledged the retainer by notation.

On April 25,1975 Judge Pihl issued an affidavit in contradiction to Mrs. Baker's notification, and on May 7, 1975 Mr. Baker filed a petition and affidavit into the probate court, testifying that Mrs. Baker had done as Judge Pihl had ordered.

At a hearing on May 8.1975 Judge Pihl failed to acknowlege Mr. Baker's challenge to his false affidavit, and refused to admit testimony by Mr. Baker as to said facts. Defendant Pihl ordered that Mrs. Baker be removed as executor of her father's estate on the basis of his own false affidavit.

On or about May 8, 1975 petitioners filed a civil rights complaint against the State of Oregon in the United States District Court for the District of Oregon, civil no. 75-530, to challenge the constitutionality of ORS 113.195 (the executor removal statute Appendix C-3). Petitioners claimed deprivation under the due process, and equal protection clause of the United States Fourteenth Amendment. The Honorable District Court Judge Otto R. Skopil deliberated jurisdiction for about 147 days, until October 2, 1975 which was a hearing date in the probate court,(App A-6).

On July 2,1975 Judge Pihl appointed Robert Briggs as administrator of the Estate of Fritz Gindhart.

On October 31,1975 petitioners filed a petition for leave to file a writ of mandamus into the United States Supreme Court No. 75-644, on the grounds that the court should have properly advised petitioners, and given leave to amend, dismissed December15,1975,(App A-5).

Meanwhile, Judge Musick and Robert Briggs ignored exhibits of evidence of Judge Pihl's false affidavit, and defendant Briggs issued a Subpoena Duces Tecum on September 8,1975 against Edna Baker, to obtain cancelled checks and other records of the estate, to be heard October 2,1975. The estate records contained evidence of the probate court's complicity.

On September 26,1975 petitioners filed notice of special appearance into the probate court, challenging that court's jurisdiction.

On October 2,1975 defendants Briggs and Musick awarded summary determinations against the estate of Fritz Gindhart. One claim of which had been legally rejected and was required to be brought up in a regular court of law as required under ORS 115.155, SEE Appendix C-5 .

On October 13, 1975 defendants Briggs and Musick had Mrs. Baker arrested and jailed overnight. She was released the next afternoon on her own recognizance, if she would agree to appear in court October 21,1975.

On October 21,1975 petitioners filed another notice of special appearance, indicating the statutory nature of appearances as required by ORS 16.-150, see Appendix C-1.

On October 30,1975 defendant Briggs issued an affidavit of contempt against Mrs Baker and ordered her to appear November 12,1975.

Meanwhile petitioners had filed an action to obtain a writ of habeas corpus in the United States District Court no. 75-994, on the grounds that Mrs.

Baker was incarcerated without jurisdiction or authority.

On November 12,1975 petitioners filed an answer to Order to Show Cause into the probate court, in which petitioners objected to the abuse of jurisdiction while federal actions were pending, and that the probate court had totally ignored petitioners special pleadings.

On November 12,1975 defendants Briggs and Musick again had Mrs Baker jailed overnight, and threatened Mr Baker with jail if he did not provide estate records

Petitioners action for a writ of habeas corpus was dismissed summarily on November 10,1975 (App A-6).

On or around December 1,1976 petitioners found in the probate court records that defendant Briggs had issued an administrator's deed into escrow so that the buyer, on the estate sale contract could borrow money to pay off the defaulted contract. The administrator empowering statute, ORS 114.305 provides authority for defendant Brigg's action, although the administrator afforded petitioners no notice or hearing to protect Mrs. Baker's testamentary rights, SEE Appendix C-6.

On December 8,1975 petitioners filed a complaint in the United States District Court for the District of Oregon No. 75-1124, which challenged the constitutionality of ORS 114.305 as it was applied in contravention to the substantive rights provided to Mrs. Baker by the laws and constitution of the State of Oregon for the estate of Fritz Gindhart; and the deprivation of petitioners' liberty by defendant Briggs.

The Honorable Judge Burns dismissed petitioners' complaint on the court's own motion - no jurisdiction - with leave to amend within 30 days, on January 21,1976.

(SEE Appendix A-5)

On February 19,1976 petitioners filed an amended

complaint to join probate judge Musick as defendant in action 75-1124 on the grounds that actions of defendants holding hearings in probate court without notice to petitioners, whereby title was passed without hearing upon the rights provided to petitioners by the laws and constitution of the State of Oregon. The action was dismissed in hearing on April 26,1976, and by order on May 26,1976. SEE Appendix A-4

Petitioners refiled their challenge to the executor removal code, ORS 113.195, on April 26,1976 as United States District Court No. 76-391 against probate Judge Pihl, as he was the proper defendant, where he had issued a false affidavit, and acted upon same to deprive petitioners of fair hearings with due process and equal protection of the law.

Petitioners filed notice of Lis Pendens on April 29,1976 and motion for a Three-Judge Court with interlocutory injunction on May 18,1976. The Honorable District Court Judge Robert C. Belloni dismissed petitioners' complaint, without hearing, on the grounds that a judge may not be sued, on May 28,1976,(App A-3).

The United States District Court for the District of Oregon action No. 76-391 is on appeal to the United States Court of Appeals for the Ninth Circuit as No. 76-2311, and is included in instant petition for review on certiorari, without judgement.

District Court Action No. 75-1124 is United States Court of Appeals No. 76-2415, as included in instant petition for review on certiorari.

The United States Court of Appeals for the Ninth Circuit dismissed an Emergency Motion for a Temporary Restraining Order in Appeal No. 76-2311 on June 24, 1976. (SEE Appendix A-3)

The United States Court of Appeals for the Ninth Circuit dismissed defendant Pihl's motion to supplement the record of No. 76-2311 on Oct. 15,1976 (App A-2).

The United States Court of Appeals for the Ninth Circuit dismissed petitioners' appeal of No. 76-2415 on November 9, 1976 , SEE Appendix A-2.

Petition for rehearing in banc dismissed December 29,1976, (App A-1).

REASONS FOR GRANTING THE WRIT

I APPEALS COURT ABUSED DISCRETION WITHOUT JUDICIAL NOTICE

Petitioners submit that Appeal No. 76-2311 was dismissed in the United States District Court for the District of Oregon No. 76-391 without answer and without hearing, and that petitioners had alleged and supported with exhibits that defendant Judge Pihl had issued a false affidavit and that said court had been notified thereof, has established a judicial fact. Petitioners did ask the United States Court of Appeals to take judicial notice thereof, in response to the summary dismissal motion by defendants in Appeal No. 76-2415.

Petitioners submit that the Appeals court did not take judicial notice as required by the Federal Rules of Evidence, Rule 201(d). This Court should grant writ to review *BAKER et ux v. PIHL, (CA no.76-2311)* before judgment in the United States Court of Appeals for the Ninth Circuit, as well as a writ to review appeal no. 76-2415 for the facts as stated. (See App.B-2)

II PETITIONERS' RIGHTS ARE CONSTITUTIONALLY PROTECTED

This Court has said that a statutory privilege is a property right, that if a state provides a privilege, the state may not take away that privilege without due process of law:

GOSS v. LOPEZ, 419 U.S. 565,573,574, 95 SCt 729,735,736 (1975)

ARNETT v. KENNEDY, 416 U.S. 134,165,166, 94 SCt 1633,1649,1650 (1974)

BOARD OF REGENTS v. ROTH, 408 U.S. 564,571,577, 92 SCt 2701,2709 (1972)

GOLDBERG v. KELLY, 397 U.S. 254,262, 90 SCt 1101,1117, (1970)

While the foregoing cases represent 'Legitimate Claim to Entitlement', the 'Limits of Legitimate Exercise of State Power' was recognized in:

BODDIE v. CONNECTICUT, 401 U,S. 371,379,380, 91 SCt 780,786,787, (1971)

Petitioners submit that privileges are provided to:

(1) a testator;

(2) the testator's choice as executor;

(3) the executor's authority;

(4) the executor's tenure;

(5) and the legatee.

(a) STATUTORY RIGHTS PROVIDED BY THE STATE OF OREGON

Whereas, any person who is named in a will as the testator's choice to be the estate's executor, has a statutory right to be appointed:

SEE APPENDIX C for selected portions of the probate code.

ORS 112.227 – where the express will controls.

ORS 112.410 – provides power of appointment.

ORS 113.085 – provides preference in appointment.

ORS 113.105 – eliminates bond requirement.

ORS 114.305 – express will restricts or provides.

In the alternative, the laws and constitution of the State of Oregon do not provide the probate court with arbitrary powers, except as the executor may yield to the probate court. The appointed representative has fiduciary powers to protect the estate from arbitrary court proceedings:

ORS 114.265 – provides fiduciary capacity.

ORS 115.155 – power to reject summary determination.

(b) CONSTITUTIONAL RIGHTS PROVIDED BY THE STATE

The constitution of the State of Oregon provides substantive rights to due process of law, and equal protection of the law, whereas:

ARTICLE I §10 – ADMINISTRATION OF JUSTICE

> No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done to him in his person, property, or reputation. -

which provides the Legitimate Claim to Entitlement for due process of law in judicial proceedings;

ARTICLE I §20 – EQUALITY OF PRIVILEGES AND IMMUNITIES OF CITIZENS

> No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens. -

– – –

which provides the substantive rights to equal protection of the law, that is, the right to enforce those laws which are within the executor's authority and power.

(c) RULE OF LAW PROVIDES PRECEDENT FOR SUBSTANTIVE RIGHT

(1) that a testamentary executor has a right to be appointed;

In re Workman's Estate, 151 Or 475,477 49 P2d 1136 (1935),

HOLLADAY v. HOLLADAY, 16 Or 147,149 19 Pac 81 (1888),

(2) that an executor has a substantive right to remain as executor;

ALDERMAN v. TILLAMOOK,COUNTY, 50 Or 48,49, 91 Pac 298,300 (1907),

(3) that an executor has a substantive right to pursue statutory rights, see *ALDERMAN,supra*, where that court established, by rule of law, the following rights:

(i) injunctive rights

(ii) equity jurisdiction

(iii) right not to contest executor removal in prejudiced probate court

(iv) right to avoid appeal procedure from conspiratorial probate adjudication

(4) that a probate judge cannot deny any statutory rights,

CARRUTHERS v. COBB, 68 P2d 479,482

(d) UNITED STATES CONSTITUTION PROTECTS LEGITIMATE CONDUCT

Petitioners' conduct was constitutionally protected pursuit of statutory and substantive entitlements. It should be conceded that petitioners intended to, and did remove jurisdiction from the probate court to a regular court of law (ORS-115.155) for the remaining rejected claims against the estate of Fritz Gindhart. When Mrs. Baker fired the estate attorney James Auxier, she notified the court that it could not give a summary determination. No estate claimants chose to pursue their claims in a regular court of law as provided by ORS 115.155.

III ORS 113.195 LACKS DUE PROCESS SAFEGUARDS

This Court has ruled that a statute which provides overbroad and vague grounds within which to finalize a right or privilege deprives one of rights to due process of law, where ORS 113.195 vacillates on ground for removal as: " - - - or other grounds - - - ".

ORS 113.195 deprives petitioners of recourse at law as protected by Article I § 10 of the Oregon State Constitution (App C-1) where:

(1) the appointment of a replacement administrator may not be stayed on appeal,

KNIGHT v. HAMMAKER, 33 Or 154, 54 Pac 659,660 (1898)

(2) the estate legal counsel have conspired to prevent petitioners from enforcing state law,

ALDERMAN v. TILLAMOOK, 50 Or 48, 49 91 Pac 298,300 (1907)

(3) the court has conspired to deprive petitioners of counsel, and refused to allow the Bakers to bear witness or question accusers,

WEB v. TEXAS, 409 US 95,98, 93 SCt 351,353 (1972)

IV ORS 113.195 PROVIDES ARBITRARY "SHOW CAUSE" POWERS

ORS 113.195 is facially unconstitutional in that it unfairly shifts the burden of proof upon the executor when it may be the probate court which is seeking the change. The Oregon high court has ruled that the burden of proof lies upon the one seeking the change;

FASANO v. WASHINGTON COUNTY COMM. 264 Or 574,586 507 P2d 23 (1973)

And This Court has struck state statutes which unfairly shifted the burden of proof;

SPEISER v. RANDALL, 357 US 513,524 78 SCt 1332,1341 (1958)

V DEFENDANTS ACTED WITHOUT JURISDICTION OR AUTHORITY

Defendant Pihl had no authority nor jurisdiction to issue and to act upon upon a false affidavit. A false affidavit becomes perjury when it affects the outcome of a judicial proceeding, and petitioners have submitted proof that defendant Pihl lied in his affidavit, which he relied upon to remove Mrs. Baker as executor of her father's estate.

Petitioner submit that this Court has nulified adjudications based upon perjured testimony.

Defendants' Briggs and Musick had no authority nor jurisdiction to subpoena and incarcerate Mrs Baker. Defendants' Briggs and Musick had the probate records of the estate of Fritz Gindhart in their hands when they harrassed and jailed Mrs Baker, whereas, the defendants were aware that Mr. Baker had submitted an affidavit that Judge Pihl's removal affidavit was false. The fact remains, that defendants Briggs and Musick were acting without due process of law, where perjury had possibly been committed.

Defendant Pihl had no authority nor jurisdiction to harrass and to refuse testimony by Mr Baker. Judge Pihl did not provide due process of law when he failed to question Mrs Baker as to why she had to fire the estate attorney, James Auxier, whereas he ordered Mrs Baker to hire another attorney. When Mr. Baker asked Judge Pihl for the court's recognition, Judge Pihl refused.

Defendants' Briggs and Musick had no authority nor jurisdiction to harrass and threaten Mr. Baker. Defendants Briggs and Musick deprived Mr. Baker of the right to protect his wife and himself from illegal activity, in that he was not allowed to testify in matters of the estate, until Mrs Baker had

been jailed, and then defendants harrassed and threatened Mr. Baker, rather than ask pertinent questions in respect to Mr. Baker's affidavit.
SEE: WEB v. TEXAS 409 U.S. 95,98, 94 SCt 351,353 (1972)

VI ORS 114.305 LACKS DUE PROCESS SAFEGUARDS

The administrator empowering statute (ORS 114.305) provides an administrator no right to circumvent the testator's express will. In fact, ORS 114.305 expressly limits the powers of an estate administrator in its introductory paragraph, wherein it says, " - - - except as otherwize provided by the testator's will - - - ".

But, ORS 114.305 fails due process clause of the Fourteenth Amendment to the United States Constitution, in that it does not expressly provide notice to a testamentary executor, or otherwize testamentary empowered provisee, when estate property rights may be finalized. As an example, if Mrs Baker had been replaced as executor of her father's estate, with due process of law, in proper judicial proceedings, she would yet have rights — by the express intent of her father, as provided by express clause in ORS 114.305. Therefore, defendants enforcement of ORS 114.305 is unconstitutional as depriving petitioners of statutory entitlement.

ORS 114.305 is facially unconstitutional, in that it deprives petitioners of notice, and enforcement of ORS 114.305 effectively shifts the burden of proof onto petitioners shoulders, where defendants may freely alter an estate contract or other obligation.

VII ORS 114.305 UNFAIRLY BURDENS WRONGFULLY REMOVED EXECUTOR

The statute fails to distinguish between a representative of the estate (testamentary) as to a representative of the probate court (administrator). The state's highest court has ruled that the habit and custom of an estate property sale by an administrator, when the probate court is prejudiced, would not be proper, that is, such a sale should be enjoined.

ALDERMAN v. TILLAMOOK COUNTY, 50 Or 48, 91 Pac 298,300 (1907)

VIII FEDERAL LAW PROSCRIBES CONSPIRATORIAL DEPRIVATION OF EQUAL PROTECTION OF THE LAW

Petitioners have revealed, through evidence and pleading, that defendants, and others, have indeed conspired, with a class based invidiously discriminatory animus, to deprive petitioners of their rights to equal protection of the la.. As the statement of the case reveals, the state courts had been trying to force an estate land sale contract through equity decrees, although the buyers had not made payments which were due on said contract. The petitioners had notified the state courts of the buyers' default, yet the probate court would not let petitioners persue foreclosure, nor would the court seek contempt against the buyers.

Rather than leaving parties to their legal recourse, Judge Pihl ordered a summary hearing on Paul Reeder's rejected claim against the estate. That Judge Pihl showed prejudice is proved by the fact that Reeder did not request a summary determination until 3 days later. A look at ORS 115.155 (App C-5)shows that a summary determination hearing must provide 30 days notice to an executor, rather than the less than 2 weeks which Judge Pihl allowed. ORS 115.155 also shows that the probate court loses its jurisdiction to hear a summary, if the executor gives proper notice.

Petitioners dismissed their attorney, and filed a demurrer to Reeder's claim. Judge Pihl had no jurisdiction to consider any further claims against the estate of Fritz Gindhart, which explains the arbitrary order that Mrs Baker hire an attorney, that is, arbitrary because no law requires that an executor hire an attorney, and the testator's express will specifically proscribed such a requirement, (App D-1).

Mrs. Baker did hire an attorney, Frank Porcelli, as Judge Pihl had ordered, although she hired him under a specific contract to investigate certain crimes against the estate,(App D-5).

Defendant Pihl issued a false affidavit, so that he could remove Mrs. Baker as executor of her father's estate, and in fact, to damage her for trying to correct harm done to her father.

That petitioners have been discriminated against is further illustrated by the fact that Judge Musick and the replacement administrator Robert Briggs have twice jailed Mrs. Baker, and threatened Mr Baker with incarceration, in an attempt to obtain estate records which proved that defendant Pihl had in fact issued a false affidavit.

SEE Appendix D-4

Petitioners submit that they have been included in a class of citizens who cannot address a probate court of the State of Oregon, because petitioners are not members of the State Bar Association. In addition, petitioners submit that they have not been fairly represented by the attorneys they have purchased, and the attorney they were ordered to purchase, and that the attorneys have conspired to protect each other in causing damage to the rights of petitioners, whereas, see the estate contract which the defendants took control of and circumvented, (App D-2, and see the default paragraph App D-3, ¶2).

IX ALL COURTS MUST OBEY FEDERAL CONSTITUTION

For all practical purposes, the probate court of the State of Oregon in Washington County is not only representing the express will of the deceased, Fritz Gindhart, but also the legislative intent of the citizens of the State of Oregon. Accordingly, the probate court of the State of Oregon in Washington County cannot provide adjudications which are whimsical, capricious, and totally arbitrary; deprive the legally constituted executor of the estate of Fritz Gindhart certain statutory and substantive entitlements, without due process of law, or equal protection of the law; provide adjudications which are repugnant to the United States Constitution, and the legislative intent of the citizens of the State of Oregon.

The United Stater 7th Circuit has said:

> "State judges, - - - , have the responsibility to respect and protect persons from violations of federal constitutional rights."
>
> *GOSS v. STATE OF ILLINOIS*
> *312 F2d 257,259 (1964)*

Petitioners are not seeking federal jurisdiction over probate of estates, but rather, they are seeking that jurisdiction may be had over state judges and their appointees who may have committed civil and criminal acts, ie., perjury, unlawful incarceration, intimidation, and fraud while acting under color of law, which has deprived petitioners of due process and equal protection of the law.

The United States Ninth Circuit has affirmed damages against a judge, SEE *GREGORY v. THOMPSON 500 F2d 59, (1974).*

X COURT'S POWER TO PROTECT RIGHTS OF PERSONS

27 years ago this Court issued an injunction in a probate matter, where a state trust law deprived estate beneficiaries of the right to due process notice, *MULLANE v. CENTRAL HANOVER BANK AND TRUST Co., 339 U.S. 306,313,314.*

A number of times this Court has struck down probate escheate laws:

ZSCHERNIG v. MILLER, 389 U.S. 429 (1968),
KOLOVRAT v. OREGON, 366 U.S. 187 (1961),
HAUENSTEIN v. LYNHAM, 100 U.S. 483,488 (1879)

Petitioners respectfully request the privilege of the indulgence of this Court to allow two non-attorneys to appear and argue the jurisdiction of federal courts in civil rights matters, and to outline the current trend in state probate jurisdictions, where attorneys and judges use non-appealable[1] power to control estate properties in violation of statutory rights. 163 years ago this Court affirmed the position that, if an executor was able to act, the probate court could not appoint an administrator to sell property of the estate:

GRIFFITH v. FRAZIER, 8 Cranch 9,22(1814).

Petitioners submit that defendant Pihl and others have done all that they could to prevent Mrs. Baker from acting in her capacity as executor of her father's estate, and that there is no recourse in a state court which denies a citizen the right to appear and the right to benefit of state laws. It is further submitted that federal law provides a citizen the right to appear in federal courts, 28 U.S.C.A. 1654, and that federal law provides a citizen the right to recourse for deprivation of statutory and substantive law interests, 28 U.S.C.A. 1343 and 42 U.S.C.A. 1983, and that this Court has the power to protect those rights.

[1]non-appealable in the sense that no stay of execution may be had on an executor removal appeal, to prevent a new court-appointed administrator from conspiratorial involvment, see *Alderman, 80 Or at 80.*

In current decisions, this Court has reversed actions which have taken propety interest, or statutory interest, without due process of law:

FUENTES v. SHEVIN 407 U.S. 67,86 (1972)
SNIADACH v. FAMILY FINANCE CORP., 395 U.S. 337,339 (1969),

And see: BELL v. BURSON, 402 U.S. 535,539.

As the Amicus Curiae (unreported) said in *GOSS v. LOPEZ 419 U.S. 565,* to this Court:

> The interest which we advance in this case was perhaps best summarized by justice Frankfurter in *Joint Anti-Fascist Refugee Commitee v. McGrath 341 U.S. 123,171-72(1951) (concurring opinion)*
>
> " No better instrument has been derived for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling so important to a popular government that justice has been done."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

EDNA I. BAKER — ROGER L. BAKER
RT 1, BOX 538
BEAVERTON, OR
MAIL: P.O. BOX 5018
ALOHA, OREGON
97005
PH: 649-1897

PETITIONERS - in propria persona

UNITED STATES OF AMERICA]
STATE OF OREGON] ss.
COUNTY OF MULTNOMAH]

Affidavit of Truth and that Petition is Well Founded In Law

We, Edna I. Baker and Roger L. Baker, being first duly sworn, depose and say: that we are citizens of the UNITED STATES, over the age of 21 years, and competent to be witnesses in this cause; that the facts and allegations in this petition are the truth, and that the theories relied upon by petitioners are well founded in law.

petitioner EDNA I. BAKER *petitioner ROGER L. BAKER*

UNITED STATES OF AMERICA]
STATE OF OREGON]ss.
COUNTY OF MULTNOMAH]

BE IT REMEMBERED, that on this_____ day of January, 1977, before me, the undersigned, a Notary Public in and for the said County and State, personally appeared the within named affiants known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN THE TESTIMONY WHEREOF, I have hereunto set my hand and affirmed my official seal the day and year last above written.

.....
NOTARY PUBLIC FOR OREGON

My Commission expires.....

Notary Seal

APPENDIX A

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

ROGER L. BAKER and EDNA I. BAKER,
Appellants,
v. NO. 76-2311
JUDGE HOLLIE PIHL,
Appellee. ORDER

Appeal from the United States District Court for the District of Oregon

Before: HUFSTEDLER, SNEED and KENNEDY, Circuit Judges

Pursuant to Rule 3A of the Rules of the Ninth Circuit, this case has been classified as one in which the questions raised on appeal are, in the unanimous opinion of the panel, of such a nature that oral argument would not be of assistance. Therefore the case is ordered submitted to the court for decision without oral argument on January 20,1977, in San Francisco, California.

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
DEC 29,76

ROGER L. BAKER and EDNA I. BAKER,
Petitioners-Appellants, NO. 75-2415
v. ORDER
ROBERT BRIGGS and JUDGE ALBERT MUSICK,
Respondents-Appellees.

Before: WRIGHT and GOODWIN, Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the en banc suggestion, and no judge of the court has requested a vote on it. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

Mo. Cal. 11/1/76

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
NOV 11,76

ROGER L. BAKER and EDNA I. BAKER,
Petitioners-Appellants,

vs.

ROBERT BRIGGS, and JUDGE ALBERT MUSICK,
Responents-Appellees

No. 76-2415

ORDER

Before: WRIGHT, Circuit Judge:

Appellant's motion for extension of time to file reply brief is treated by the Court as a motion for leave to file late brief. Upon due consideration, the motion is hereby granted, and the reply brief is ordered filed.

Single Judge Cal 11/10/76

/s/ *Eugene A. Wright*
U.S. Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
NOV 9,76

ROGER L. BAKER, and EDNA I. BAKER,
Petitioners-Appellants,

vs.

ROBERT BRIGGS, and JUDGE ALBERT MUSICK,
Respondents-Appellees.

No. 76-2415

ORDER

Before: Wright and GOODWIN, Circuit Judges.

Upon due consideration, the motion to dismiss for lack of jurisdiction is treated as a motion for summary affirmance and the district court's order of May 26,1976 is hereby affirmed.

Mo Cal 11/1/76

/s/ *Eugene A. Wright*
/s/ *Alfred N. Goodwin*
Circuit Court Judges

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
oct 15,76

ROGER L. BAKER and EDNA I. BAKER,
Petitioners-Appellants,

vs.

JUDGE HOLLIE PIHL,
Respondent-Appellee.

No. 76-23
No. 76-2311

ORDER

Before: WALLACE, Circuit Judge.

Upon due consideration, the motion to supplement the record is denied without prejudice to its renewal. Copies of the material to be included in the record we were not attached to the motion and the motion did not state the relationship of the material to the district court proceedings.

I-J 10/ 6/76

/s/ *Wallace*
U.S. Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
JUN 24,76

ROGER L. BAKER and EDNA I. BAKER,
Petitioners-Appellants,

vs.

JUDGE HOLLIE PIHL, Respondent-Appellee.

No. 76-2311

ORDER

Before: CHOY and KENNEDY, Circuit Judges

Upon due consideration, the emergency motion for a temporary restraining order is denied.

/s/
/s/
U.S. Circuit Judges

Mo Cal 6/21/76

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

FILED
May 28,76

ROGER L. BAKER and EDNA I. BAKER,
Plaintiffs,

vs.

JUDGE HOLLIE PIHL,
Defendant.

Civil No. 76-391
ORDER

Roger L. Baker and Edna I. Baker seek to enjoin the enforcement of an Oregon statute (113.195). In so doing they have filed suit against Judge Hollie Pihl, Circuit Judge for Washington County. Judge Pihl, they allege, enforced this statute which meets with their disaproval.

Judge Pihl cannot be sued; he is immune, Pierson v. Ray, 386 U.S. 547 (]967).

IT IS ORDERED:

1. As the filing fees have been paid, the clerk is ordered to file the complaint.

2. The action is dismissed.

DATED this 28th day of May,1976.

/s/Belloni
U.S.Dist.Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROGER L. BAKER, et ux.,
Petitioners,
v.
ROBERT BRIGGS, et al.,
Defendants.

Civil No. 75-1124
ORDER OF DISMISSAL

IT IS HEREBY ORDERED that the within action be and it hereby is dismissed upon the following grounds:

1. Failure by plaintiffs to state a claim.
2. Lack of subject matter jurisdiction.

DATED this 26 day of May,1976.

James M. Burns /s/
DISTRICT JUDGE

PRESENTED BY:
Bruce M. Hall
BRUCE M. HALL, atty for deft.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROGER L. BAKER, et ux.,
Petitioners,
V.
ROBERT BRIGGS, et al.,
Defendants.

Civil No. 75-1124
ORDER ON MOTIONS

THIS MATTER having come on regularly for hearing on April 26,1976, plaintiffs appearing by Roger L. Baker, attorney pro se, defendant Robert Briggs, personal representative of the Estate of Fritz Gindhart, appearing by Bruce M. Hall, and defendant Albert R. Musick, appearing by John C. McLean, Assistant Attorney General of the State of Oregon, and the Court having considered the briefs filed herein and the argument of counsel;

IT IS HEREBY ORDERED:

1. That plaintiffs' Motion for the convening of a three-judge court is denied;
2. That plaintiffs' Motion for Interlocutory Injunction is denied;
3. That plaintiffs' Motion for Temporary Restraining Order is denied;
4. That plaintiffs' Motion to Show Cause is denied; and
5. That Motions to Dismiss filed by defendant Robert Briggs and defendant Albert Musick are allowed.

DATED this 26 day of May, 1976.

James M. Burns /s/
DISTRICT JUDGE

Presented by:
Bruce M. Hall /s/
BRUCE M. HALL atty for deft.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ROGER L. BAKER and EDNA I. BAKER,
Petitioners,
vs.
ROBERT BRIGGS,
Defendant.

Civil No. 75-1124
ORDER OF DISMISSAL

THIS MATTER coming on to be heard before the undersigned on plaintiffs' Motions for Temporary Restraining ing Order and Interlocutory Injunction and defendant's Motions to Strike and Motion for Protective Order, and the Court hearing the argument of counsel and being advised in the premises;

The Court does hereby, on its own motion, dismiss said complaint, and each claim therein, on the ground that this Court lacks jurisdiction as to each said claim.

Plaintiffs are given thirty days within which they may file an Amended Complaint.

DATED this ___day of January,1976.

DISTRICT JUDGE

Presented by:
Bruce M. Hall
BRUCE M. HALL atty for deft.

FILED 1/22/76

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

DEC 15 1975

Mr. Roger L. Baker
PO Box 5018
Aloha, Or 97005

RE: BAKER, ET UX. v. U.S.DISTRICT CRT FOR THE DISTRICT OF OREGON,75-644

Dear Sir:

The Court today entered the following order in the above-entitled case:

The motion for leave to file a petition for a writ of mandamus is denied.

Very truly yours,

Michael Rodack,Jr.,Clrk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDNA ILA BAKER,
Petitioner,

vs.

WARREN BARNES, Sheriff of Washington County, et al,
Respondent.

Civil No. 75-994

RECOMMENDATION AND ORDER

This is a petition for habeas corpus. Filing fee has been paid.

It is difficult to determine the occurrences which gave rise to this petition. I think a Circuit Judge might have jailed petitioner for contempt. She says she was held overnight and released on her own recognizance. This happened on October 13,1975.

Petitioner has not exhausted her state remedies as required by 28 U.S.C. 2254(b).

The petition should be dismissed.

Dated this 5 day of November,1975.

George E. Juba/s/
United States Magistrate

After review of the file and record in this case, I approve the above recommendation.

It IS ORDERED that the petition is dismissed.

DATED this 10th day of November,1975

Otto R. Skopil jr. /s/
U.S. Dist. Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FILED
OCT 2,75

ROGER L. BAKER and EDNA I. BAKER,
Plaintiffs'

vs.

THE STATE OF OREGON,
Defendant.

Civil No. 75-530
O R D E R

Based upon the record,

It iS ORDERED that plaintiffs' Motion for interlocutory Injunction, filed June 4,1975, and plaintiffs' Motion for Temporary Restraining Order, filed September 15,1975, be and they are DENIED.

FURTHER ORDERED that defendant's Motion to dismiss, filed July 11,1975, be and it is hereby granted.

DATED this 1st day of October,1975.

Otto R. Skopil Jr./s/
U.S.Dist. Judge

APPENDIX B

I CONSTITUTIONAL PROVISION

U.S.C.A. Const. Amend. 14 § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II STATUTORY PROVISIONS

28 U.S.C.A. § 1343:

CIVIL RIGHTS AND ELECTIVE FRANCHISE

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42.

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C.A. § 1983:

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C.A. § 1985 subsections (2) and (3)

CONSPIRACY TO INTERFER WITH CIVIL RIGHTS - - -

Obstructing justice; intimidating party, witness or juror

(2) - - - ; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; - - - ; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

III RULE PROVISION

US Dig Fed Rules of Evid 20 - Rule 201(d):

WHEN MANDATORY

A court shall take judicial notice if requested by a party and supplied with the necessary information.

APPENDIX C

I OREGON STATE CONSTITUTIONAL PROVISIONS

Or. Const. art I § 10:

ADMINISTRATION OF JUSTICE

No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done to him in his person, property, or reputation. -

Or. Const. art I § 20:

EQUALITY OF PRIVILEGES AND IMMUNITIES OF CITIZENS

No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens. -

II OREGON STATUTORY PROVISIONS

OR. REV. STAT. § 16.150:

SPECIAL APPEARANCE NOT WAIVED BY SUBSEQUENT GENERAL APPEARANCE

If a motion or other form of application on special appearance is interposed and denied, the objection thereby taken shall not be waived by the subsequent entering of a general appearance; and the court"s ruling thereon shall be subject to review on appeal from the final judgment, decree or other determinative appealable order in the cause or matter.

OR. REV. STAT. § 112.227

INTENTION OF TESTATOR EXPRESSED IN WILL AS CONTROLLING

The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in this section, ORS 112.-230 and 112.410 apply unless a contrary intention is indicated by the will.

OR. REV. STAT. § 112.410

EFFECT OF GENERAL DISPOSITION OR RESIDUARY CLAUSE ON TESTATOR'S POWER OF APPOINTMENT

A general residuary clause in a will or a will making general disposition of all of the testator's property does not exercise a power of appointment held by the testator unless specific reference is made to the power or there is some other indication of intention to include the property subject to the power.

OR. REV. STAT. § 113.085

PREFERENCE IN APPOINTING FERSONAL REPRESENTATIVE

(1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:
(a) To the executor named in the will.
(b) To the surviving spouse of the decedent or his nominee.
(c) To the nearest of kin of the decedent or his nominee.
(d) To the Administrator of the Public Welfare Division - - - .
(e) To the Director of Veterans' Affairs - - - .
(f) To any other person.
(2) If it appears that the decedent died wholly intestate and without heir, - - - .

OR. REV. STAT. § 113.105

NECESSITY AND AMOUNT OF BOND; EXCEPTIONS; BOND NOTWITHSTANDING WILL.

(1) Unless a testator provides in his will that no bond shall be required of the executor of his estate, or unless the personal representative is the sole heir or devisee or is the Director of the Division of State Lands, or is the Administrator of the Public Welfare Division or his designated representative, or is the Director of Veterans' Affairs, the personal representative shall not act nor shall letters be issued to him until he files with the clerk of the court a bond. the bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court, A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of his trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than $1,000. - - - .
(3) - - - .

OR. REV. STAT. § 113.195

REMOVAL OF PERSONAL REPRESENTATIVE

(1) When a personal representative ceases to be qualified as provided in ORS 113.095, or becomes incapable of discharging his duties, the court shall remove him.
(2) When a personal representative has been unfaithful to or neglectful of his trust, the court may remove him.
(3) When a personal representative has failed to comply with ORS 113.092, the court may remove him.
(4) When grounds for removal of a personal representative appear to exist, the court, on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why he should not be removed. A copy of the order to show cause and of the petition, if any, shall be served upon the personal representative and upon his surety as provided in ORS 111.215.

OR. REV. STAT. § 114.265

GENERAL DUTIES OF PERSONAL REPRESENTATIVE

A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in his possession and preserve settle and distribute the estate in accordance with the terms of the will and ORS chapters 111,112, 113, 114, 115, 116 and 117 as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.

OR. REV. STAT. § 114.305

TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVE

Except as restricted or otherwise provided by the will or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:
(1) - - - .
(2) Retain assets owned by the decedent pending distribution or liquidation.
(3) Receive assets from fiduciaries or other sources.
(4) Complete, compromise or refuse performance of contracts of the decedent that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease real property, the personal representative, among other courses of action, may:

(a) Execute and deliver a deed upon satisfaction of any sum remaining unpaid or upon receipt of the note of the purchaser adequately secured; or

(b) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow, be paid to the successors of the decedent, as designated in the escrow agreement.

(5) Satisfy written pledges of the decedent for contributions, whether or not the pledges constituted binding obligations of the decedent or were properly presented as claims.

(6) Deposit funds not needed to meet currently payablecdebts and expenses, and not immediately distributable, in bank or savings and laon association accounts, or invest the funds in short-term United States Government obligations.

(7) Abandon burdensome property when it is valueless, or is so encumbered or is in a condition that it is of no benefit to the estate.

(8) Vote stocks or other securities in person or by general or limited proxy.

(9) Pay calls, assesments and other sums chargeable or accruing against or on account of securities.

(10) Sell or exercise stock subscription or conversion rights.

(11) Consent, directly or through a commitee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise.

(12) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the personal representative is liable for any act of the nominee in connection with the security so held.

(13) Insure the assets of the estate against damage and loss, and insure himself against liability to third persons.

(14) Advance or borrow money with or without security.

(15) Compromise, extend, renew or otherwise modify an obligation owing to the estate. If the personal representative holds a mortgage, pledge lien or other security interest, he may accept a conveyance or transfer of the encumbered asset in lieu of foreclosure in full or partial satisfaction of indebtedness.

(16) Accept other real property in part payment of the purchase price of real property sold by him.

(17) Pay taxes, assessments and expenses incident to the administration of the estate.

(18) Employ qualified persons, including attorneys, accountants and investment advisers, to advise and assist the personal representative and to perform acts of administration, whether or not discretionary, on behalf of the personal representative,

(19) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties.

(20) Continue any business or venture in which the decedent was engaged at the time of his death to preserve the value of the business or venture.

(21) Incorporate or otherwise change the business form of any business or venture in which the decedent was engaged at the time of his death.

(22) Discontinue and wind up any business or venture in which the decedent was engaged at the time of his death.

(23) Provide for the exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(24) Satisfy and settle claims and distribute the estate as provided in ORS chapters 111, 112, 113, 114, 115, 116 and 117.

(25) Perform all other acts required or permitted by law or by the will of the decedent.

OR. REV. STAT. § 115.155

SEPARATE ACTION REQUIRED BY PERSONAL REPRESENTATIVE

If the claimant files a request for summary determination of the claim as provided in ORS 115.145, the personal representative, within 30 days after the date of service of a copy of the request upon the personal representative or his attorney, may notify the claimant in writing that if he desires to prove the claim he must commence a separate action against the personal representative on the claim within 60 days after the date of receipt of such notice. If the claimant fails to commence a separate action within 60 days after the date of receipt of the notice, the claim, to the extent disallowed by the personal representative is barred.

APPENDIX D - EXHIBITS

LAST WILL and TESTAMENT

IN THE NAME OF GOD, AMEN,

KNOW ALL MEN BY THESE PRESENTS, That I, FRITZ GINDHART, a resident of Washington County, Oregon, being of sound and disposing mind and memory and not acting under fraud, fear, duress or undue influence of any person whomsoever, do hereby make, constitute, publish and declare this to be my Last Will and Testament, hereby revoking all former Wills by me at any time heretofore made:

First, I hereby state that my wife LIZZIE BELLE GINDHART has predeceased me and two children were born as the issue of our marriage, namely, MAE ELIZABETH GINDHART, and EDNA ILA GINDHART, now BAKER. I have a son, HARRY OTTO GINDHART, by a previous marriage.

Second, I direct that all my just debts be paid as soon as convenient after my decease.

Third, All of the rest, residue and remainder of my estate, real, personal and mixed and wheresoever situate, including after-acquired property, I hereby give, devise and bequeath unto my daughter, Edna Ila Baker, per stirpes and not per capita.

Fourth, I have confidence in my daughter, Edna Ila Baker , and her ability to transact the business of my estate and I therefore appoint her as the personal representative in the administration of my estate and I direct that no bond or other official undertaking be required of her as such, and she may dispose of or deal with my estate or any part thereof in such manner as she may deem to be to the best interests of my estate, and she may sell any of the properties of my estate upon such terms and conditions as she may deem proper, in her discretion, and without any citation, hearing, order of the court or any other legal formality, but subject only to the confirmation of the court in which any probate proceedings may be had for my estate. *END PAGE ONE LAST WILL AND TEST. (SIGNED)*

Fifth, As stated above I have confidence in my daughter, Edna Ila Baker, and I have discussed with her my hopes and wishes concerning my real property and my daughter, Mae Elizabeth Gindhart, and I am making no restrictions of any kind on her in my estate, but I am leaving everything to Edna Ila Baker. This has always been the plan I had and I have had the advice of no one in reaching this decision to leave my entire estate to my said daughter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aloha, Oregon, this 14th day of October, 1972.

(signed) Fritz Gindhart

WITNESSED'

FILED INTO PROBATE Dec. 13,1974. certified copy

This CONTRACT, Made the 1 day of July,1972, between Fritz Gindhart of the County of Washington and the State of Oregon, hereinafter called the first party, and John R. & Jacqueline C. Skourtes of the County of Washington and State of Oregon hereinafter called the second party, as hereinafter specified, the first party agrees to sell, and the second party agrees to purchase, the following described real estate, situate in the County of Washington, State of Oregon, to-wit:

Addendum: Supercedes legal description on form #147: the east half of the northwest quarter of the northeast quarter section of Section 31, Twn. 1, South Range 1 WWM, Washington County - Oregon, equaling 20 full acres less 400 sq. ft. lying within the boundaries of S.W. Weir Road and 170th Avenue. *initialed* J.H.

for the sum of forty eight thousand *Dollars* ($48000.00) *on account of which* twelve thousand *Dollars* ($12000.00) *is paid on the execution hereof (the receipt of which is hereby acknowledged by the first party).*

Balance to be paid as follows-

Payment dates	principal	Interest
January,1974	12,000.00	--0--
January,1975	12,000.00	1,680.00
January,1976	12,000.00	840.00

Real Estate Taxes- Proration to begin after July 1,1973- which is the date of possession.

Additional Terms - Intrical part of this contract

First party agrees to give second party approximately 660 feet long - 30 feet wide road easement after January 1, 1978 alo g the northerly line of tax lot 500. beginning at the N.W. corner of tax lot 500.

Purchaser to use sellers water supply until public water is available.

Seller will furnish deed to buyer for five contiguous acres along the north boundary line of property at buyers option to allow second party to build residence

EXHIBIT A: Section 31 Washington County Map is a part of this contract.

The first party agrees that at his expense on July 1, 1973 he will furnish unto second party a title insurance policy insuring (in an amount equal to said purchase price) marketable title in and to said premises in the first party on or subsequent to the date of this agreement, save and except the usual printedexceptions and the building and other restrictions and easements now of record, if any. First party also agrees that when said purchase price is fully paid and upon request and upon surrender of the agreement, he will deliver a good and sufficient deed conveying said premises in fee simple unto the second party, his heirs and assigns, free and clear of encumbrances as of the date hereof and free and clear of all encumbrancessince said date placed, permitted or arising by, through or under first party, excepting however, the said easements and restrictions and the

taxes, municipal liens, water rents and public charges so assumed by the second party and further excepting all liens and encumbrances created by the second party or his assigns.

But in case the second party shall fail to make the payments aforesaid, or any of them, punctually and upon the strict terms and at the times above specified or fail to keep any of the other terms or conditions of this agreement, time of payment and strict performance being declared to be of the essence of this agreement, then the first party shall have the following rights: (1) to declare the contract nul and void (2) to declare the whole unpaid principal balance of said purchase price with the interest thereon at once due and payable and/or (3) to foreclose this contract by suit in equity, and in any of such cases, all the right and interest hereby created or then existing in favor of the second party derived under this agreement, shall utterly cease and determine, and the premises aforesaid shall revert and revest in the first party without any declaration of forfeiture or act of reentry, or without any other act by first party to be performed and without any right of the second party of reclamation or compensation for money or for improvements made as absolutely fully and perfectly as if this agreement had never been made.

The second party further agrees that failure by the at any time to require performance by the second party of any provision hereof shall in no way affect first party's right hereunder to enforce the same, nor shall any waiver by said first party of any breach of any provision hereof be held to be a waiver of any succeeding breach thereofor as a waiver of the provision itself.

---

signed and recorded

IN THE PROBATE COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

IN THE MATTER OF THE ESTATE OF FRITZ GINDHART, DECEASED	No. E-1533 PETITION & AFFIDAVIT
REGARDING THE CITATION FOR REMOVAL OF EDNA I. BAKER PERSONAL REPRESENTATIVE	

I, Roger L. Baker, husband of the personal representative, being first duly sworn, depose and say that I am an interested person in any or all hearings for the above entitled estate and do acknowledge that I did personally accompany my wife, when on April 9, 1975, she did pay Frank Porcelli jr. Beaverton attorney, a check from the estate of Fritz Gindhart in the amount of $850.00, see attched copy.

My wife did notify the court, on April 14 1975, that she had hired an attorney, as an attached copy will indicate.

My wife did advise said attorney during the first meeting, of several, of the court's threat to remove her.

My wife did know of the appearance date on May 2, 1975, at 1:30 P.M., as the aforementioned attached copy will indicate, but my wife was misled(sic) into believing that hearing would be cancelled if she hired another attorney.

I, Roger L. Baker, do hereby petition the above entitled court to cease and desist in any further orders which may constitute harassment or abridgemnt of Edna I. Baker's and my own rights of equal protection under the law, and due process of the law under the 14th Amendment to the United States Constitution.

As evidence of my interest in the above entitled estate, I hereby attach to this PETITION & AFFIDAVIT, copies of checks paid to various attorneys for said estate, by Edna I. Baker and myself, directly from our joint savings account at washington Federal Savings and Loan.

(signed)

(SEAL)

Roger L. Baker, husband of Edna I. Baker, pers. rep.

sworn to May 7,1975

ATTORNEY FEE AGREEMENT

AGREEMENT made this (18) day of April, 1975 between EDNA BAKER, personal representative of the Estate of Fritz Gindhart, herein referred to as "Client," and FRANK PORCELLI, JR., Attorney at Law, herein referred to as "Attorney."

Client employs attorney to investigate the facts and circumstances surrounding the sale of real property by Fritz Gindhart to John R. Skourtes. It is understood that this agreement does not contemplate the institution of any law suit. The purpose of this employment is strictly limited to the determination of whether a possible cause of action exists. It is further understood and agreed that a law suit was previously filed on behalf of Client against John R. Skourtes and Jacqueline C Skourtes in the Circuit Court of the State of Oregon for the County of Washington file number 33-587, wherein Client was represented by Paul M. Reeder of Hillsboro, Oregon. It is further understood that law suit was prosecuted to an appeal to the Supreme Court of the State of Oregon wherein judgment for John R Skourtes and Jacqueline C. Skourtes was affirmed.

Client shall pay to attrney for all services rendered hereunder at the sum of $40 per hour. It is further understood that Client has paid a retainer to Attorney in the sum of $850.) which sum has been placed in Attorney's Client's trust account. Said sum will be withdrawn as billed on a monthly basis.

Attorney in his descretion(sic) may employ a handwriting expert for the determination of the genuineness of signatures. All such experts shall report exclusively to Attorney. Fees charged by said experts shall be paid by Client.

Attorney has made no warranties as to the possibility of a good cause of action existing against John R. Skourtes and Jacqueline C. Skourtes, and all expressions made by Attorney relative thereto are matters of Attorney's opinion only. It is understood that Attorney has expressed his opinion that the chances of a good cause of action existing against John R. Skourtes and Jacqueline C. Skourtes are less than 50 percent. It is further understood that Client nevertheless respectfully requests Attorney to perform the services as agreed in this contract.

Cost, necessary disbursements, and reason-

able and personal travel expenses incurred by Attorney in advancing Client's interests are to be born by Client.

IN WITNESS WHEREOF Attorney and Client have executed this agreement on the day and year first above written.

(signed)

Client

(signed)

ATTORNEY

Supreme Court, U. S.
FILED
FEB 23 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1049

Roger L. Baker, *et ux.*,

Petitioners,

— v. —

Judge Hollie Pihl,

Respondent.

Robert Briggs in his representative capacity, and
Probate Judge Albert R. Musick,

Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONERS PURSUANT TO RULE 24(5)

Roger L. Baker, and
Edna I. Baker
Rt. 1, BOX 538
BEAVERTON, OREGON
MAIL: P.O. BOX 5018
ALOHA, OREGON
97005
Petitioners - in propria
ph:649-1897

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IN THE

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——— v. ———

Judge Hollie Pihl,
Respondent.

Robert Briggs in his representative capacity, and
Probate Judge Albert R. Musick,
Respondents.

SUPPLEMENTAL BRIEF FOR PETITIONERS PURSUANT TO RULE 24(5)

In our Petition for Certiorari we asked this Court to include the *BAKER v. PIHL* case for review without judgment, under Supreme Court Rule 20, where the court below had failed to take judicial notice, in accordance with Fed Rules of Evid, Rule 201(d). We indicated that we had been notified of a hearing, which was to be held in the court below on *BAKER v. PIHL,* but we would not have been able to delay our Petition on *BAKER v. BRIGGS,* as we had not been notified in time to request an extension of time in which to file this petition.

CITATION TO CASE BELOW

Petitioners received the following memorandum from the court below on January 29, 1977 and it is therefore submitted by this Supplement:

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROGER L. BAKER and EDNA I. BAKER,
Petitioners-Appellants,

vs.

JUDGE HOLLIE PIHL,
Respondent-Appellee.

No. 76-2311

MEMORANDUM

[January 25, 1977]

Appeal from the United States District Court
for the District of Oregon

Before: HUFSTEDLER, SNEED, and KENNEDY,
Circuit Judges.

The district court properly dismissed appellants' civil rights action. Appellee is a probate court judge in Washington County, Oregon. The appellee is immune from suit under 28 U.S.C. § 1983. (*Pierson v. Ray*, 386 U.S. 547 (1967).) Whether or not Judge Pihl was right or wrong in removing Edna I. Baker as the personal representative of the decedent, the judge's action was within the scope of his duties.

AFFIRMED.

QUESTIONS

I PRESENTED BY THE COURT BELOW

The main question this Supplement brings before this Court is:

> whether a state judge is acting within the scope of his duties when he is violating his state's criminal code ?

II AVOIDED BY THE COURT BELOW

1. Does a state judge have immunity in a constitutional action for injunctive relief ?

2. Does the United States District Court below have discretion to dismiss an action without hearing, or finding of fact ?

3. Does the United States Circuit Court of Appeals below have discretion to affirm a finding of fact, when no hearing, or stipulations were had on any facts ?

RELEVANT FACTS

1. The United States District Court for the District of Oregon dismissed the action against judge Pihl without hearing, or finding of fact.

2. Petitioners, in their complaint, accused judge Pihl of having issued a false affidavit.

3. Petitioners supported their accusation of their state's criminal code having been violated, with evidentiary exhibits.

4. Defendant Pihl was never allowed to answer petitioner's accusations.

5. Reliance upon his own false affidavit is a felonious crime of Perjury under Oregon Revised Statute 162.065.

REASONS FOR REVIEW OF ISSUES

I DECISION NOT IN ACCORD WITH OPINIONS OF THIS COURT

Petitioners submit that the above quoted memorandum is a prime example of an issue which should be reviewed by this Court.

The courts below have incorrectly interpreted the above entitled actions as being against judges who have acted within the scope of their duties.

The decisions in these cases have gone beyond the bounds of conscience and propriety, where the defendant judge Pihl lied under oath, and dared Mrs. Baker to argue with him. The judge refused to allow Mr. Baker to intervene and to testify as to the truth and the law in the matter.

There has never been a finding affirmed by this Court, that a state judge could violate the criminal code of his state, while keeping within the scope of his duties. The defendants in these cases are sworn to uphold the laws and constitution of the State of Oregon, as well as the Constitution of the United States.

In *BROWN v. DUNNE (7th Cir CA 1969) 409 F2d 341,343*, the court refused to take jurisdiction over a civil rights action in a probate matter, but they referred to their remand of *SPIRES v. BOTTORFF (7th Cir CA 1963) 317 F2d 273-74-75*, where the ground was that the defendant judge was

not, under the allegations, performing judicial function so as to be immune.

In the instant case, the defendant judge was able to act under color of law by reliance upon his own perjury which, petitioners submit, is outside of his judicial scope, and beyond the Oregon State Legislature's intent.

In *UNITED STATES v. CLASSIC, 313 U.S. 299,326,* this Court said, "misuse of power, possessed by virtue of state law - - - is action taken 'under color of' state law".

However, the instant case does not carry the stigma of misuse, but of illegal use of state power, which petitioners submit, is a deprivation of Due Process of Law.

This Court in *SCREWS v. UNITED STATES 325 U.S. 91,111* clearly said, "- - - that under 'color' of law means under 'pretence' of law. Thus acts of officers in the ambit of their personal persuits are plainly excluded". Petitioners submit that the above quotation means, as applied to the instant case, a judge may exercise discretion, and even be wrong, but he may not willfully and knowingly commit a crime to achieve his own personal goal.

II STATE PECEDENT PROVIDES SOUND RULES OF LAW

The case which petitioners basically rely upon, *"ALDERMAN v. TILLAMOOK COUNTY, 50 Or 48, 91 Pac 298(1907)"*, is a case in point of judicial prejudice, and is a case in point as to the relief available. The difference rests in the property contract, and the fact that judge Pihl swore to a false affidavit, rather than asking an attorney friend to lie, as the judge did in *"ALDERMAN"*.

The courts below did not follow the standards which were set by the Oregon Supreme Court in *"ALDERMAN"*, and they have left the false impression that perjury, by a judge in a judicial proceeding, is perfectly within the Due Process Standards of the United States Fourteenth Amendment.

Or where the court in *"Alderman"*, said an executor should not be required to appear in a prejudiced probate court.

"ALDERMAN", established the judicial precedent, and ORS 115.155 established the legislative intent that, a probate judge has no jurisdiction to hold summary hearings,

without consent of the executor, although, the executor may be removed on the basis of the probate'court's own affidavit, if a just cause exists. Why should the probate judge think that his false affidavit could be any more efficacious than, say, an affidavit on the size of the executor's shoes?

III COURTS BELOW LACK POWER TO FIND FACT WITHOUT HEARING

The court below arrived at a conclusion of law,,in opposition to unopposed allegations, which is not in accord with opinions of this Court. The honorable Circuit Court Judges, Hufstedler, Sneed, and Kennedy, of the court below are not empowered with fact finding functions on an appeal. The United States District Court for the District of Oregon, which *BAKER v. PIHL* was appealed from did not provide a hearing for the allegations, which precludes any finding other than those facts in the pleadings.

SEE: *CHESSMAN v. TEETS,*
350 U.S. 3,4, 76 SCt 34,
And; 354 U.S. 156,164-65, 77 SCt 1127

The courts below are only too willing to find fact, where none exist; to look to rule of law, where none applies; to settle issues, where nothing can be settled, without a fact-finding trial which will prescribe the applicable law, and define the adjudicable issues to be resolved.

CONCLUSION

For these reasons, and others already presented in our petition for certiorari, we respectfully submit that this Court should grant certiorari in these cases.

Edna I. Baker Roger L. Baker
PETITIONERS IN THE ABOVE ENTITLED CAUSES
P.O. Box 5018
Ph:649-1897 Aloha, Or 97005

UNITED STATES OF AMERICA]
STATE OF OREGON]ss. AFFIDAVIT
COUNTY OF MULTNOMAH] OF VERACITY

We, EDNA I. BAKER and ROGER L. BAKER, being first duly sworn, depose and say: that we are citizens of the UNITED STATES, over the age of 21 years, and competent to be witnesses in this cause; that all facts and allegations in the above SUPPLEMENT are true, as stated by petitioners, and that the above actions are well founded in law.

PETITIONER Edna I. Baker

PETITIONER Roger L. Baker

UNITED STATES OF AMERICA]
STATE OF OREGON]ss.
COUNTY OF MULTNOMAH]

BE IT REMEMBERED, that on this_____day of February 1977, before me, the undersigned, a Notary Public in and for the said county and state, personally appeared the within named affiants known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN THE TESTIMONY WHEREOF, I have hereunto set my hand and affirmed my official seal the day and year last above written.

NOTARY PUBLIC FOR OREGON

My Commission expires.....

Notary Seal

APPENDIX

Or Rev Stat § 162.065:

Perjury. (1) A person commits a crime of perjury if he makes a false sworn statement in regard to a material issue, knowing it to be false.

(2) Perjury is a Class C felony.

[1971 c.743s.184]